

### REMARKS/ARGUMENTS

By this paper, Applicant replies to the Office Action of February 19, 2010 and respectfully requests reconsideration of the application. Applicant notes the Decision of March 30, 2010 stating that the finality and restriction requirement were improper. Applicant notes that the finality was withdrawn and that the restriction requirement was withdrawn. Claims 181 are pending for examination. Applicant notes the Decision of March 30, 2010 was mailed to Neifeld IP Law, PC which is not the attorney of record. Please ensure that all correspondence is mailed to the correct attorney of record at the correct address and no one else. The Office Action of February 19, 2010 is non-final.

Filed concurrently is a Petition Request for Withdrawal of Office Action of February 19, 2010 and Refund of Petition and Extension Fees. The substantive comments of that paper are incorporated by reference herein in their entirety for the sake of brevity. Applicant believes that the claim amendments in Claims Appendix Two presented in the filing of November 5, 2009 were not entered and not examined. Applicant had the right to have the claim amendments presented automatically entered as of right when finality was withdrawn. Applicant requests a new office action examining the claims as amended November 5, 2009. A copy of Claims Appendix Two is attached for convenience.

There is no express statement in the Office Action of February 19, 2010 that the claim amendments in Claim Appendix Two of the filing of November 5, 2009, were entered or considered. Additionally, the claim amendments should have eliminated many of the concerns stated in the rejections in the Office Action of February 19, 2010. There is not a glimmer of an indication that the Examiner was looking at the amended claim language when the Office Action of February 19, 2010 was issued. The quotes of claim language in the Office Action always stop short of reciting the amended language immediately following the quoted language. There is no explanation in the rejections as to why the claim amendments do not eliminate the concerns expressed in the rejections. The Action misstates claim language in claims that were amended. Thus, it is apparent from reading the Office Action of

February 19, 2010 that the Examiner was not examining the claims as amended. The Office has erred by not considering the claims as amended November 5, 2009.

If the Office takes the position that the claims as amended November 5, 2009 were in fact examined, the Office Action fails to provide an explanation in the rejections as to why the claim amendments do not eliminate the concerns expressed in the rejections. The arguments in the filing of November 5, 2009 have not been addressed and Office Action and the rejections have failed to address all material traversed. It is respectfully requested that any future actions address all material traversed and arguments presented and provide explanations of why the amendments do not eliminate the concerns in the rejections.

The Office Action objects to the specification since the abstract is regarded as too long and objects to the drawings as informal.

Claims 1-181 are now pending, a total of 181 claims. Claims 1, 2, 28, 31, 53, 56, 60, 74, 93, 102, 119, 130, 133, 140, 148, 154, 158, 161, 172, 179, 180 and 181 are independent. There are no new claims and no new claims fees.

Claims 1-27, 31-52, and 56-181 stand rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, language regarding “assistance of a computer” is rejected.

Claim 181 stands rejected under 35 U.S.C. 101 as directed to non-statutory subject matter. Claim 181 is rejected as inoperative and lacking utility. Claims 1-27, 31-52, and 56-180 stand rejected under 35 U.S.C. 101 as directed to non-statutory subject matter as drawn to an abstract idea. These claims are rejected as lacking transformation of any physical subject matter or so broad that they preempt any and every way that the steps can be preformed. The rejection states, “In the instant case, the method can be performed by a human and also by a computer.”

Claims 28-30, and 53-55 stand rejected under 35 U.S.C. 103(a) as unpatentable over Weatherly et al. (U.S. Patent No. 6,049,784).

**I. Objection to Specification (Abstract) and Drawings**

In response to the objection to the specification based on the abstract, it is noted that the abstract complied with the law as it existed in July 2000, and the PTO has no authority for retroactive rule making. MPEP § 608.01(b) is cited in the Office Action as if it stated requirements for applicants. However, the memorandum from the President to the Office that is attached as Exhibit 3 to the paper of November 5, 2009 forbids the Office from citing the MPEP against applicants. Please explain any exemption from instructions from the Executive Office of the President. If the Office can offer no such explanation, please cease citing non-legal documents as if they were law. The stated concerns for storage “on computer tape,” in 2010, are not legitimate. This abstract has been fine for ten years. Any problem with the abstract should have been raised years ago. This objection is at best piecemeal examination. If this objection has any basis in law, and any reason other than to harass and delay and prolong the proceedings instead of allowing and issuing a patent, please explain.

In response to the objection to the drawings filed July 7, 2000, it is noted that the application was published with formal drawings, 2005/0010517, and it is unclear why this issue is raised at all.

**II. Rejection under 35 U.S.C. 112, 2<sup>nd</sup> Paragraph**

Claims 1-27, 31-52, and 56-181 are rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, language regarding “wherein at least some portion of” a lease or leasing is performed with “assistance of a computer” is rejected.

First, the claims were amended by the Amendment of November 5, 2009 and it is believed that the amendments eliminate the concerns in the rejections. Language was added. Further, many claims (130, 133, 140, 154, 161, 179, 158, 172 and 180) were amended and now the language “with assistance” is not in the claims. This in one of the main reasons Applicant believes the amendments were not entered nor considered. The Office Action

misstates what the amended claims recite. Please consider the amendments and explain why they do not eliminate the concerns in any future Action.

Second, Applicant submits that the language “wherein at least some portion of” a lease or leasing is performed with “assistance of a computer” is definite and well understood by those of skill in the art of working with computer technology. Those of skill in the computer art understand the terminology “assistance of a computer”. They understand how a computer or hardware and/or software can be of assistance. They understand how hardware and/or software is designed to assist a tenant. Just because language is broad, does not mean the language is indefinite. MPEP § 2173.04. Breadth of a claim is not to be confused with indefiniteness. *In re Miller*, 441 F.2d 689, 169 U.S.P.Q. 597 (CCPA 1971).

Further, the fact that a claim recites alternative language is not sufficient to hold the claim indefinite. MPEP § 2173.05(h)(II). Alternative expressions using “or” are acceptable and not in violation of 35 U.S.C. 112, 2<sup>nd</sup> paragraph. *In re Gaubert*, 524 F.2d 1222, 187 U.S.P.Q. 664 (CCPA 1975). Thus, the language “soliciting, originating, managing, or analyzing” is acceptable. Additionally, the language “hardware and/or software” is acceptable.

Similar language is found in issued patents since it is well understood by those in the art. See U.S. Patent No. 7,580,874 issued August 25, 2009 to Deckoff. Independent claim 1 recites “wherein, at least one of the reevaluating and the adjusting is performed using a computer.” Similar language can be found in independent claims 2 and 13. This sort of language is understood by those of skill in the art. The use of similar language in claims of issued patents is persuasive that such language is readily understood and not indefinite. There is no indefiniteness.

The § 112, ¶ 2 analysis in the Office Action, appears to confuse breadth with indefiniteness, and to reject alternative language. The prior papers (the Amendment of November 5, 2009, pages 29-33) suggested that these rejections appear to violate MPEP §§ 2173.04 and 2173.05(h). However, because the Action fails to answer all material traversed, the undersigned has no idea what the reasoning of the rejection is.

Each of the method claims specifically says that certain steps involve a “computer.”

The Office Action repeatedly states “the method can be performed by a human and also by a computer,” but never explains how a claim that requires a “computer” can be performed entirely by a human. The failure to answer all material traversed has imposed delay. If the examiner explains the apparent contradiction in the stated position, Applicant’s counsel can resolve any legitimate point the examiner has in mind, but when the Action merely repeats earlier actions with no explanation or elaboration and no fair answer to the material traversed, prosecution cannot advance.

All claims, including claims 1-27, 31-52, and 56-181 meet the requirements of Section 112, 2<sup>nd</sup> paragraph and are definite.

### **XIII. Rejection under 35 U.S.C. 101**

Claim 181 is rejected under 35 U.S.C. 101 as directed to non-statutory subject matter. Claim 181 is rejected as inoperative and lacking utility. Claims 1-27, 31-52, and 56-180 stand rejected under 35 U.S.C. 101 as directed to non-statutory subject matter as drawn to an abstract idea. These claims are rejected as lacking transformation of any physical subject matter or so broad that they preempt any and every way that the steps can be preformed. The rejection states, “In the instant case, the method can be performed by a human and also by a computer.”

First, the claims were amended by the Amendment of November 5, 2009 and it is believed that the amendments eliminate the concerns in the rejections. Language was added. Further, many claims (130, 133, 140, 154, 161, 179, 158, 172 and 180) were amended and now the language “with assistance” is not in the claims. It is believed the amendments were not considered. Please consider the amendments and explain why they do not eliminate the concerns in any future Action.

Second, with respect to claim 181, the Action of February 19, 2010 raises a “utility” rejection, but the analysis bears no resemblance to the required analysis set forth in MPEP § 2107 et seq. Applicant has asked repeatedly that the Office not improvise new legal analyses or examine based on personal opinions and preferences, but rather be confined to those grounds for rejection that exist in written legal documents. Applicant has asked that where

the MPEP sets forth procedural requirements for examination, the Office follow them. Please either honor these two requests or provide an explanation for any departure from them.

The Action purports to raise a “utility” rejection which seems to be part of or the purported basis for the rejection of claim 181 under § 101 regarding patentable subject matter. The Examiner’s analysis is pure gibberish. This rejection is a mishmash of legal standards and is improper as a matter of law. The rejection confuses the issues of whether an invention as disclosed has utility and is operative with whether a claimed process is patent-eligible under § 101. The rejection fails to set forth any proper statement of law and should be withdrawn.

MPEP § 2107 sets out the analysis to be applied for utility—the Office Action bears no resemblance whatsoever to the procedures set out in § 2107. The Action observes that the claims recite “**functional** descriptive material.”<sup>1</sup> Somehow the Examiner draws a conclusion that “functional descriptive material” contributes to non-patentability, identifying no recognizable legal principle. (Please note that later in the Action regarding Section 103, the Examiner maintains similar language is **non-functional**. The contradiction is never explained.)

MPEP § 2107 sets out a simple procedure for examining for “utility.” Upon initial examination the examiner should review the **specification** to determine if there are any statements asserting that the claimed invention is useful for any particular purpose.<sup>2</sup> In most cases, an applicant’s assertion of utility creates a presumption of utility that will be sufficient to satisfy the utility requirement of 35 U.S.C. § 101.<sup>3</sup> MPEP § 2107.02(IV) instructs: “To

---

<sup>1</sup> Applicant notes that there is no law whatsoever that turns on “descriptive material.” The only legally-relevant concept is “printed matter,” *In re Lowry*, 32 F.3d 1579, 1582–83, 32 USPQ2d 1031, 1034 (Fed. Cir. 1994), confined to “arrangements of *printed lines or characters*, useful and intelligible *only* to the human mind,” and that is not alleged here. Not only has the Examiner invented new law, even that invented law is misapplied.

<sup>2</sup> MPEP § 2107.02(II).

<sup>3</sup> MPEP § 2107.02(III)(A); *In re Langer*, 503 F.2d 1380, 1391, 183 USPQ 288, 297 (CCPA 1974).

properly reject a claimed invention under 35 U.S.C. 101, the Office must (A) make a *prima facie* showing that the claimed invention lacks utility, and (B) provide a sufficient evidentiary basis for factual assumptions relied upon in establishing the *prima facie* showing.”

The analysis in the Office Action is totally unrelated to the test set forth in MPEP § 2107, because it is based on an Examiner-improvised mish-mash of unrelated provisions of the MPEP. Instead, the Action demonstrates that the claimed inventions ***do have substantial, practical and credible utility***, by explaining how they are useful when used with a computer. Applicants’ disclosure contains a statement of specific and substantial utility, at Section V (entitled “Use of the lease structure”) starting on page 17, for example, in paragraphs [0071]-[0075], [0078], [0085] and [0087]. The Action is dead silent in any analysis of this portion of the specification. The Examiner made no attempt to establish a *prima facie* case of a lack of utility. Thus, any rejection on the grounds of lack of utility should be withdrawn.

The “utility” rejection of the Action demonstrates that the Examiner has made no *bona fide* effort to examine the application within the law. The previous examiner conceded that he was deliberately obstructing prosecution of the application.<sup>4</sup> Now Examiner Subramanian manufactures his own law without careful application of MPEP procedure, and refuses to answer all material traversed. It is hard to see how the examiners’ actions can be considered *bona fide* efforts to advance prosecution. When an Action sets forth no more than a confused jumble of unrelated legal concepts, Applicants can make no meaningful reply. Because of these procedural breaches, under administrative law principles set forth by the Supreme Court outlined at § VII.A.4 at page 26 of the paper filed November 5, 2009, no rejection was raised, and any rejection that might once have existed has now lapsed.

The Office has failed to meet its burden of establishing a *prima facie* case of a lack of utility. Thus, any rejection on the grounds of lack of utility should be withdrawn.

The Office Action fails to consider the claim language. Claim 181 is directed to “a computer system” not a process. The Office action states, “The computer system is broadly

---

<sup>4</sup> Interview Summary of Feb 26, 2007, ¶ 41.  
REPLY TO OFFICE ACTION of February 19, 2010, page 8  
This paper dated August 19, 2010

interpreted to be software designed to assist a tenant in entering an improvements lease. Hence claim 181 merely recites elements of a system (software program elements and not tangible hardware components) without showing any ability to realize functionality of the related elements (i.e. functional descriptive matter per se) and therefore is rendered inoperative lacking any utility. Note that a computer (or software program) code cannot by itself perform the underlying function until it is loaded on some computer readable memory and accessed by the computer (or a processor). Functional descriptive matter, per se, is not statutory.”

Thus, the Office Action calls the invention recited in claim 181, software in disregard of the claim language which recites “A computer system, comprising: hardware and/or software designed to assist a tenant in entering an improvements lease....”

The rejection is a confused jumble of legal concepts and therefore, there can be no meaningful reply. The rejection should be withdrawn.

With respect to the rejection of claims 1-27, 31-52, and 56-180 under 35 U.S.C. 101 as directed to non-statutory subject matter as drawn to an abstract idea for preemption, the Office Action cites to a non-precedential opinion. It has been noted several times that it is not lawful and is improper to cite such an opinion from the BPAI *Bilski* decision as if it were law. (See Petition of July 6, 2009 at page 33-34). The PTO specifically withheld any authority from the Examiner to cite *Ex parte Bilski*. Yet the Office Action again repeats this improper act. (Office Action of February 19, 2010 at page 6.) Improper acts in Office Actions do not advance prosecution.

Applicant notes additionally:

- The Action again cites *Ex parte Lundgren*, 76 USPQ2d 1385 (BPAI 2005) and notes, correctly, that *Lundgren* is precedential. The Action cites *Lundgren* for pages 1407-08. But – the Action does not indicate that pages 1407-08 are from the dissent, that is, a statement of what the law is not. If a party made this kind of boldly misleading representation to a court, the party would be sanctioned. This goes to basic truthfulness and ethics. It is a clear effort to obstruct prosecution, to misappropriate claim coverage.



- The Supreme Court of the United States decided the *Bilski* on June 28, 2010 and that is now the best authority on patent eligibility under Section 101 rather than the lower court decisions.

The Action seems to take the position that business method claims are not patentable. This position is not consistent with the law. The Supreme Court in the case *Bilski v. Kappos*, No. 08-964 (U.S. June 28, 2010) refused to categorically deny patent protection to business methods. Thus, business method claims are patentable subject matter. The reasoning applied in the Action is not the law.

The claims each recite methods, and specify that some part of the method requires processing by a computer. A computer is indisputably a “machine.” Processing in a machine is not “abstract.” The claims meet the “machine or transformation” test, and are not otherwise abstract. Therefore, they are § 101 subject matter.

The rejections under Section 101 are improper. All claims are in compliance with Section 101.

### **III. Rejection under 35 U.S.C. 103(a)**

With respect to the rejection of Claims 28-30, and 53-55 under 35 U.S.C. 103(a) as unpatentable over Weatherly et al. (U.S. Patent No. 6,049,784), the rejections acknowledge that the Weatherly patent does not disclose numerous features recited in the claims. The Office Action then states, “However these features are interpreted as non-functional descriptive material as they do not materially affect the steps of soliciting proposals, soliciting offers of financing and notifying the respective parties when an offer matches a proposal.” Thus, the Examiner gives no patentable weight to much of the recited claim language.

With respect to claims 29 and 54, the rejections acknowledge that the Weatherly patent does not disclose an additional feature recited in the claims. The Office Action then states, “However Official notice is taken that soliciting offers of financing using an auction protocol is old and well known in the art. The motivation to combine this feature is that it helps in facilitating numerous offers from several participants interested in making the offers.”

With respect to claims 30 and 55, the rejections acknowledge that the Weatherly patent does not disclose an additional feature recited in the claims. The Office Action then states, “However this feature is interpreted as as [sic] non-functional descriptive material as they [sic] do not materially affect the steps of storing information and analyzing the information.” Again the Examiner gives no patentable weight to recited claim language.

**In a nutshell, there is no prior art that actually discloses what the Applicant claims**, and so, in order to reject the claims, the Examiner has disregarded claim language. First, the Examiner disregards claim language as “non-functional descriptive material” with no basis in law. Then the Examiner tries to eliminate the need for identifying features in the prior art by taking “Official Notice” of features stated by the Examiner to be prior art.

With respect to the rejections that disregard claim language as “non-functional descriptive material”, it is unclear why the rejections are based on Section 103 of the Patent Act which addresses the issue of obviousness. No where do the rejections state the word “obvious” or allege that the claimed invention is obvious. No where do the rejections combine teachings or identify a motivation to combine teachings. The rejections are based on one reference and one reference alone. The rejections do not combine teachings within a single reference. Thus, a rejection under Section 103 is improper.

Section 103 is not to be used as an excuse or fudge factor for rejecting an invention that is clearly not shown by a single reference, and hence a rejection under Section 102 is not appropriate. Section 103 is not a catch-all for rejecting claims when a rejection under Section 102 can not be established. The rejection acknowledges that the Weatherly patent does not disclose many features recited in the claims. Thus, the Examiner seems to be aware that he can not assert that the Weatherly patent anticipates the claims. A rejection under Section 102 is improper. It seems that the Examiner just could not bring himself to reject claims under Section 102 where the statement of the rejection gives a laundry list of claimed features not met by the reference. Apparently, he felt a rejection under Section 102 did not pass the “blush” test.

The rejection seems to be applied under Section 103 in order to obfuscate the facts that (1) the claim language is indisputably not met by a single reference, (2) the claim

language is indisputably not anticipated by a single reference, (3) a rejection under Section 102 can not be established or asserted, and (4) the analysis of rejecting claims in view of prior art by striking out claim language is improper analysis. The case law cited in the Office Action does not support such faulty analysis, and even if it did, that would be very bad law and a request for a change in law would be in order. As set forth above, a rejection under Section 103 is improper also.

The Office Action of February 19, 2010 strikes out certain claims language as “non-functional descriptive material.” The MPEP gives no authorization to do what has been done in this Action, and the Federal Circuit has forbidden it repeatedly. In contrast, in the Office Action of October 3, 2008, at page 4, Examiner Subramanian characterized almost identical language in other claims as “functional descriptive material.” Perhaps the Examiner has a legitimate explanation for the 180° turnabout and his view of the law. Please carefully explained both in any further paper that raises any rejection so that Applicant has fair notice of which of the two is really meant, and a fair opportunity to move the case forward.

With respect to claims 29 and 54, the Examiner essentially makes up the existence of prior art by taking “Official Notice” of what he says is old and well known with no evidence. If it is so old and well known, why can the Examiner not easily find and provide evidence? The Patent Office has systematically failed to provide support for where official notice has been taken. Applicant concludes that the Patent Office is either unable or unwilling to provide adequate support for taking official notice.

The misuse of official notice is exacerbated. The Patent Office makes an unsupported taking of official notice with respect to soliciting offers of financing using an auction protocol. That taking is then exacerbated by apparently basing a rejection for obviousness on the matter that was officially noticed using improper hindsight to find a motive to combine. The Patent Office can not fabricate prior art out of thin air using judicial notice and then base a rejection for obviousness on that fabrication.

Taking “Official Notice” of the state of the art in a case that has been pending for 10 years is unfair and subject to even more uncertainty than in a recently filed case. The pertinent question is “Was it old and well known on July 7, 2000 when this case was filed?”

The Examiner has provided not even a scintilla of evidence that he has an excellent memory regarding the state of the art over 10 years ago or that he is an expert on the **history** of the development of the art. What seems old and well known now, may not have been old and well known 10 years ago. It is inappropriate to take “Official Notice” in most cases, but especially improper in a case that has been pending for over 10 years. The rejection of claims 29 and 54 is improper and should be withdrawn for this additional reason.

All claims distinguish from the prior art of record and are in condition for allowance.

The prior art rejections of Applicant’s apparatus claims seem to be an unfair back door attempt to deprive this Applicant of any patent protection at all for an invention that the Patent Office regards as a “business method” invention. Thus, it seems that when the Patent Office regards an invention as a “business method”, the Applicant is unfairly denied patent protection even for the computer apparatus (which is not a method).

As T.C. Director Coggins’ Petition decision of March 30, 2010 notes, the claims had been searched by several previous examiners and allowed over the art. Examiner Subramanian stated in the interview of May 2008 that he had no personal knowledge of any art that might be applicable. Under MPEP §§ 704.01 and 706.04, Examiner Subramanian had no authority to perform a new search. In October 3, 2008, the examiner followed the MPEP, and raised no new prior art issues. Yet the IFW shows that he did a new search in February 2010, and on February 19, 2010, he “took a new approach and reoriented the view” of two previous examiners, by raising new § 103 issues. It is difficult to reconcile the reopening of long-resolved § 103 issues with the MPEP, or with any motive other than deliberate obstruction. At the very least, he did not use the required form paragraph. Applicant’s attorneys have discussed this on several occasions by phone and in papers. The Examiner has stated that he believes that his personal opinion of “proper examination procedure” of performing new searches trumps the MPEP. The undersigned requests that he clear this view with SPE Kyle and T.C. Director Coggins. Further, these new issues are totally bogus, and seem to be imposed for no purpose other than delay. Kindly obtain the signature of T.C. Director Coggins for any new rejection based on a new search (or any other departure from MPEP instructions), or else leave § 102 and § 103 issues in repose.

The claims are patentable in view of the prior art of record.

#### **IV. Additional Issues**

The reason for the large number of claims is explained in the Amendment of November 5, 2009 at page 11. Because the legal standards that are applied in the Office Actions are totally unpredictable, all the undersigned can do is present the Office with more and more claims in more and more variations, in hopes of finding some that meet the Examiner's personal, unwritten, and always changing standards.

It is noted that the Office Action was issued February 19, 2010 and refers to a petition decision, but the decision itself was not mailed until March 30, 2010. Given the repeated breaches of procedure by the Office, this sequencing is highly anomalous. Given the Office's past conduct, the undersigned would like to ask that if the Office has a good faith explanation for delaying the mailing of the Petition decision until long after the Action, please provide it. Otherwise, it is difficult to avoid an inference that the timing was structured deliberately to deny this Applicant an opportunity to prosecute the application fully within the rights provided by the petition decision. Applicant filed the best paper possible in November 2009 to move the case forward. It would be appreciated if the Applicant could start counting on the same from the Office.

For the record, the undersigned understands that SPE Kyle was new to this application in February 2010. This application is far past its five year, third action trigger for careful supervision under MPEP § 707.02. Please have SPE Kyle review all future Actions carefully to ensure the following:

- that the Actions answer all material traversed. This rule has been repeatedly breached. Overwhelmingly, the delays in this application result from issues that cannot be resolved because the Office chooses to ignore the papers.

- that no rejection or objection is raised on a legal principle that has not been validly promulgated. Reference is made to the President's Bulletin on Agency

Good Guidance Practices, which was attached as Exhibit 3 to the Amendment of November 5, 2009.

The undersigned understands that both the Examiner and supervisor have had to pick this complex case up from previous Patent Office employees. The undersigned understands that the case is procedurally complex almost beyond belief. A previous examiner explained that Art Unit 3690 had a deliberate and intentional policy of obstruction and delay (Interview Summary of February 26, 2007, ¶ 41). If this is no longer Art Unit 3690 policy, Applicant's attorney has yet to see the change. Applicant stands ready, willing and able to move this application forward, as soon as the Office is. Applicant has gone out of the way to provide claim alternatives, and to point the Office to the relevant written guidelines that should govern PTO conduct so that we can move forward with agreement at least on procedure. The requests that the Office simply follow the law have been met with what is beginning to look like deliberate retaliation. Perhaps this is not the situation, and if so, please provide an explanation—but the deviations from written procedures are so numerous and consistent that retaliation is suspected.

Applicant requests careful examination of this application including examination of the claims as amended. Please examine only for requirements of law that exist in validly-issued form, without violations of non-discretionary instructions that the Office and the President have given. Applicant is entitled to the benefit of all laws that require the Office to act in favor of applicants, procedural and substantive. Both Examiner and SPE took an oath to faithfully execute the laws, and should follow that oath.

This application has been pending for over ten years. The time for guesswork is long past. It is time to consider the claim language precisely, read the MPEP and other instructions to examiners carefully and not make up rules that have no basis in law or any authorized written document, and to answer all material traversed.

MPEP § 707.07(g) requires the Examiner to "Answer All Material Traversed." At the very least, the Patent Office should have answered all material traversed in the papers of Match 4, 2009 and November 5, 2009. The Office Action of February 19, 2010 does not do

so. Most of the delay in this application has been due to Patent Office failure to answer all material traversed, and it is extremely disappointing to see this trend continued.

Any further examination should reconsider the application based on the status as it stands as of examination date, and fully answer all material traversed.

### **Conclusion**

Applicant requests a new office action examining the claims as amended November 5, 2009, with an express statement in the Office Action that the claim amendments in Claim Appendix Two of the filing of November 5, 2009, were entered and considered.

It is respectfully requested that any future actions address all material traversed and provide explanations of why the amendments do not eliminate the concerns in the rejections.

The rejections of the claims 1-27, 31-52, 56-181 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the language “assistance of a computer” are improper and should be withdrawn. It is respectfully submitted that all claims as amended are in compliance with 35 U.S.C. 112, 2<sup>nd</sup> paragraph.

The rejection of claim 181 under 35 U.S.C. 101 as directed to non-statutory subject matter as inoperative and lacking utility is improper and should be withdrawn. The rejections of claims 1-27, 31-52, 56-180 under 35 U.S.C. 101 as directed to non-statutory subject matter as drawn to an abstract idea for lacking transformation of any physical subject matter or for being so broad that they preempt any and every way that the steps can be preformed are improper and should be withdrawn. It is respectfully submitted that all claims as amended are in compliance with 35 U.S.C. 101.

The rejections of claims 28-30, and 53-55 under 35 U.S.C. 103(a) as unpatentable over Weatherly et al. (U.S. Patent No. 6,049,784) are improper and should be withdrawn. It is respectfully submitted that the claims are not met by Weatherly et al., whether taken alone or in combination with the prior art of record or other unspecified teachings.

Applicant respectfully submits that the claims are in condition for allowance.

Applicant requests that the application be passed to issue in due course. The Examiner is

urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance.


Favorable reconsideration of this application in view of the November 5, 2009 amendments to the claims and the remarks presented is respectfully considered.

In the event that any additional extension of time is required, Applicant petitions for that extension of time required to make this reply timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3219, Order No. 1906-003 .

Respectfully submitted,

Dated: August 19, 2010

By:

  
Donna L. Angotti  
Registration No. 32,679

LAW OFFICES OF DONNA ANGOTTI  
140 Broadway, Suite 4600  
New York, NY 10005  
(212) 858-7515  
(212) 858-7750 (FAX)





## **CLAIMS APPENDIX TWO**

**to**

**Amendment and Reply to Office Action for Entry  
Under 44 U.S.C. § 3512 and 5 C.F.R. § 1320.6, or  
for Entry Under 37 C.F.R. § 1.111 or § 41.33, or  
in the Alternative, Appeal Brief**

**Claim Amendments that Must be Entered Under  
44 U.S.C. § 3512 and 5 C.F.R. § 1320.6**